Significant Workplace Relations Issues

Australian Industry Group Report for Australian Furniture Removers Association Members

May 2025

Table of Contents

Executive Summary

Significant workplace relations issues include:

LEGISLATIVE DEVELOPMENTS

- Following the Australian Labor Party's victory in the 2025 Federal Election, attention now turns to various workplace relations policies announced during the campaign – here.
- The Industrial Relations Amendment (Transport Sector Gig Workers and Others) Bill 2025 has passed the NSW Parliament, creating a regulated worker jurisdiction in NSW – here.
- On 26 February, regulated workers were able to accrue sufficient service to seek the FWC's assistance to resolve disputes about unfair deactivation and unfair termination – here.
- The Department of Employment and Workplace Relations (**DEWR**) published the draft report of the legislative review of the Secure Jobs, Better Pay Act , and the final report was given to DEWR on 31 March 2025 – here.
- Superannuation on Government parental leave pay will commence 1 July 2025 – here.

FWC MAJOR CASES

- Ai Group is playing a leading role in the FWC Annual Wage Review 2024-25 and will identify significant moderating factors that need to be taken into account – here.
- Ai Group is intervening in regulated labour hire arrangement proceedings in respect of work performed at three coal mines in Queensland operated by BHP and await the decision now that the matter has been heard by the Full Bench of the FWC. This decision will be significant as it considers key issues, including whether an entity is providing labour as compared to providing a service – here.
- The FWC determined the new model dispute, consultation and flexibility clauses for enterprise agreements, which pleasingly rejected many of the ACTU proposals – here.
- The FWC is continuing proceedings relating to the potential development of a 'working from home' clause for the *Clerks – Private Sector Award 2020*. Ai Group will be attending a conference seeking to determine whether a consensus position can be reached with union parties on a proposed approach – here.
- Ai Group continues to be heavily involved in the TWU applications for minimum standards orders and an application for a road transport contractual chain order, including through its appointment to all Road Transport Advisory Group Subcommittees currently considering the applications – here.

OTHER MAJOR DEVELOPMENTS AND CASES

- A FWC decision provides guidance around pre-approval steps particularly in circumstances where there the new enterprise agreement would reduce terms and conditions for particular groups of employees – here.

- The FWC orders an employer to permit a flexible working arrangement, where the employee would be attending to the needs of their child during work hours and despite arguments that this would negatively impact customer service – here.

TRENDS IN ENTERPRISE BARGAINING

- The Average Annualised Wage Increase for federal agreements approved in the December quarter 2024 significantly increased from 3.6% in the previous September quarter to 4.8% – here.

GOVERNMENT CONSULTATION AND REPORTS

- The Government in its 2025-26 Budget, indicates it will ban non-compete clauses for employees earning under the high-income threshold in the FW Act (currently $175,000). It will also consult on restrictions to non-solicitation clauses and in relation to non-compete clauses for high income workers – here.
- The Government is consulting in relation to its commitment for pay day superannuation from 1 July 2026. Ai Group will oppose the change given the significant burden it will impose on employers – here.
- The Government is consulting on changes to the Fair Entitlements Guarantee – here.
- DEWR has released its report on the small claims procedure process for recovering underpayments – here.
- The House Standing Committee on Employment, Education and Training released its report after completing its inquiry into the digital transformation of workplaces – here.

EQUALITY, SEXUAL HARASSMENT AND OTHER WORKPLACE BEHAVIOURS

- The Queensland Government announces it will indefinitely delay its changes to its anti-discrimination laws which would have introduced a positive duty to prevent sexual harassment, discrimination and objectionable conduct – here.
- The NSW Government indicates it will consult on reform to address psychological safety to reduce pressure on its workers compensation premiums – here.
- Queensland work health safety laws now require organisations to have a written sexual and gender-based harassment prevention plan – here.
- The Federal Government approves its work health and safety Sexual and Gender-based Harassment Code – here
- The Federal Government passes the Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024, which requires large employers to set and achieve measurable targets over a 3-year period or otherwise be non-compliant and ineligible to participate in Federal Government procurement – here.
- The Fair Work Ombudsman announces its investigation into sexual harassment obligations in the building and construction industry– here.

- Overlapping obligations continue to create difficulties for employers in managing their risks in relation to sexual harassment, alongside what appears to be competing compliance and enforcement from several regulators – here.
- The Government will be consulting on a potential positive duty on duty-holders to eliminate disability discrimination, harassment and victimisation and increased obligations to make reasonable adjustments under the *Disability Discrimination Act 1992 (Cth)* – here.
- WorkSafe Victoria and the Victorian Equal Opportunity and Human Rights Commission publishes their Parallel Enforcement Strategy on work-related sexual harassment – here.

MODERN SLAVERY

- The NSW Government responds to the Modern Slavery Committee Report No.3 and does not recommend any changes – here.

FAIR WORK COMMISSION AND REGULATOR ACTIVITIES OF NOTE

- The FWC General Manager provides its 2024 Reports on enterprise bargaining, individual flexibility agreements and flexible working arrangement/extensions to unpaid parental leave requests. The reports apply to the period 26 May 2021 to 25 May 2024 – here.

Part 1 – Legislative Developments

ELECTION POLICIES

Following the Australian Labor Party's victory in the 3 May 2025 Federal Election, attention turns to various workplace relations policies announced during or prior to the campaign.

The re-elected Albanese Government announced two workplace relations policies:

- Legislating to 'protect penalty rates in awards'.
- Banning non-compete clauses to 'make it easier for workers to switch to a better job will boost wages'. 'The ban on non-compete clauses will apply to workers earning less than the high-income threshold in the Fair Work Act (currently $175,000)'. In addition, the Government intends to 'consult further on non-solicitation clauses for clients and co-workers, and non-compete clauses for high-income workers'. The various types of such clauses are outlined here.

The **Australian Greens** also made various policy announcements, including:

- 12 days reproductive leave.
- Trials of a 4-day work week.
- Paid leave for casual employees.

Return to the Executive Summary

INDUSTRIAL RELATIONS AMENDMENT (TRANSPORT SECTOR GIG WORKERS AND OTHERS) BILL 2025 (NSW) PASSED

On 27 March 2025, the NSW Parliament passed the Industrial Relations Amendment (Transport Sector Gig Workers and Others) Bill 2025. The purpose of the Bill was to expand Chapter 6 of the *Industrial Relations Act 1996* (NSW) (**IR Act**) to 'gig workers' in the transport sector as well as contract carrier businesses. The Bill also proposed removing longstanding exemptions from Chapter 6, including contracts of carriage of bread, milk and cream.

Chapter 6 of the IR Act has historically applied to owner drivers. It empowers the Industrial Relations Commission of NSW to set minimum terms and conditions that apply to owner drivers and allows the Commission to determine disputes involving owner drivers.

The Government consulted with industry for a short period on the Bill before introducing it to Parliament. On 7 March 2025, Ai Group provided feedback to the NSW Government regarding the initial draft of the Bill. Ai Group strongly opposed the passage of the Bill and raised several significant concerns about it.

Ai Group's overarching feedback to the Government was that the Bill is unnecessary and deeply problematic. It addresses issues that have already been dealt with nationally through amendments to the FW Act. There is no need for the NSW Government to place industry in the situation of having to navigate

a patchwork of complex regulation in the transport industry across NSW's boundaries with the rest of the country.

At a Federal level, industry is negotiating terms and conditions to apply to gig workers and the transport industry before the FWC (or more specifically through meetings of subcommittees of the Road Transport Industry Advisory Group). Meetings are scheduled every three weeks between January to August. The NSW Bill risks derailing those discussions.

Beyond the gig economy, feedback to Government was that small fleet businesses operate very differently to owner drivers and the Bill could place them at a competitive disadvantage. In addition, Ai Group emphasised that regulating contracts of carriage for bread, milk and cream risked causing major disruption to supply chains of essential goods. Ai Group reminded Government of the deeply problematic Road Safety Remuneration Tribunal that was established and abolished within a few years because of the disruption it threatened within the transport industry.

On 19 March 2025, Minister Sophie Cotsis introduced the Bill into NSW Parliament. It passed the Parliament on 27 March 2025, despite the very limited opportunity for scrutiny by industry and many of the concerns being unaddressed.

To its credit, the Government incorporated some of Ai Group's feedback and altered the Bill in some important respects, including limitations where there are similar applications before the FWC. Coverage has also been limited so that it does not apply to carriers unless they own or operate more than 3 motor vehicles and bicycles. Nevertheless, the Bill represents a potential challenge for the transport industry in NSW in the coming years.

A member advice covering the amendments has been distributed to Road Freight NSW members.

Return to the Executive Summary

REGULATED WORKERS' UNFAIR TERMINATION APPLICATIONS CAN BE MADE

On 5 December 2024, the Commonwealth Government registered the instruments which establish the Road Transport Industry Termination Code and the Digital Labour Platform Deactivation Code.

The Codes are relevant in the context of unfair termination claims and unfair deactivation claims in the regulated workers jurisdiction established under the FW Act.

If a regulated road transport contractor or an employee-like worker makes an application for an unfair termination/deactivation respectively, the FWC will consider several matters in determining whether the termination or deactivation was unfair, including whether the termination or deactivation was consistent with the applicable Code.

The earliest date for eligibility for unfair deactivation and unfair termination applications to the FWC for regulated workers was 26 February 2025.

Return to the Executive Summary

PROGRESS ON LEGISLATIVE REVIEW OF THE SECURE JOBS, BETTER PAY ACT

Road Freight NSW has previously advised members about the current statutory review of the:

- *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)* (**SJBP Act**) amendments; and
- sub-sections 494(4) and (5) in the FW Act (inserted by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*) relating to entry to assist health and safety representatives.

On 2 December 2024, Ai Group lodged a detailed submission to this review.

DEWR released a draft report on 3 February 2025, which contained 19 proposed recommendations. The Review Panel broadly assessed the SJBP Act as achieving its intent but indicated that a further review was needed within 2-3 years. Some employer concerns have been picked up, including the need to add to and clarify exemptions to the limitations to fixed term contracts.

Ai Group lodged a further submission in response to the draft report. It again pressed concerns, particularly in relation to the following:

- Restoring primacy of enterprise level bargaining and limit mechanisms drawing employers into multi-enterprise bargaining against their wishes, including to:
  - require genuine commonality interests for multi-enterprise bargaining
  - apply single interest stream bargaining only where appropriate
  - expand options to remove employers from single interest and supported bargaining authorisations
  - better ground multi-enterprise bargaining in the views of those to be covered – by requiring majority support determinations.
- Restoring majority support determinations as a requirement for a union to initiate bargaining and remove the scope for unions to initiate renegotiation within 5 years of the expiry of an enterprise agreement (or alternatively, reduce it to 3 years).
- Permitting the termination of an enterprise agreement after the nominal expiry date in circumstances where the enterprise agreement is unfair to both employees and employers.
- Extending the principles-based approach to requirements to explain the terms of proposed enterprise agreement and repeal sufficient interest/sufficiently representative requirements for voting on an enterprise agreement.
- In relation to intractable bargaining, applying the better off overall test in a manner that compares to an applicable award, not the previous enterprise agreement (reversing the subsequent change made by the *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024*).

- Simplifying the enterprise agreement approval process and remove the capacity for a better off overall test reconsideration.
- Providing for a comprehensive exemption against pay secrecy for contracts entered into prior to commencement.
- Adding to and clarifying exemptions to the limitations on fixed term contracts, including in relation to visa workers, project work, cadetships, funded work and jobs that are ending.
- Restoring the Australian Building and Construction Commission.
- Reducing the threshold for small claims from $100,000 to $40,000.
- Restricting the ability of the Fair Work Commission (**FWC**) to arbitrate requests for flexible working arrangements.

The Review Panel was required to report to DEWR on 31 March 2025. However, it is likely that this will not be considered by Government or released until after the 2025 election.

Return to the Executive Summary

SUPERANNUATION ON GOVERNMENT PARENTAL LEAVE PAY

The *Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Act 2024* commenced 2 October 2024, adding superannuation to the Commonwealth-funded Paid Parental Leave Scheme under the *Paid Parental Leave Act 2010*. The new entitlement commences 1 July 2025.

This change is managed by the Australian Taxation Office (**ATO**) and employers are not required to take any steps in relation to the entitlement. Services Australia will advise the ATO at the end of the 1 July 2025 – 30 June 2026 income year as to parental leave payments made to eligible employees in that period. In July 2026, the ATO will pay lump sum payments (plus nominal interest) to each employee's nominated superannuation fund.

KEY COMMENCEMENT DATES

26 February 2025
Earliest date by which a casual employee of a non-small business employer (including one employed before 26 August 2024) can be eligible to initiate the employee choice mechanism.
Earliest date for eligibility for unfair deactivation/unfair termination applications for regulated workers with the FWC.
Commencement of new model terms addressing flexibility, consultation and dispute resolution under enterprise agreements as well as a model term for settling disputes under a copied state instrument.
1 March 2025
PCBUs (person conducting a business or undertaking) in Queensland must prepare and implement a written plan to manage an identified risk to the health or safety of workers, or other persons, from sexual harassment and sex or gender-based harassment at work.
1 July 2025
AWR increases to national minimum wage and minimum wages in modern awards.
Release of new amounts: high income threshold, contractor high income threshold, FWC application fees, compensation cap in federal unfair dismissal and superannuation figures.
Commencement of 24 weeks paid parental leave payments (120 days) – increasing from 110 days.
Flexible unpaid parental leave increases to 120 days
Commencement of entitlement to receive superannuation on paid parental leave payments (ATO to pay in July 2026 as lump sum)
Positive duty reforms in Queensland to anti-discrimination legislation were expected to commence but the Queensland Government has announced they will be indefinitely delayed.

10 July 2025
Unless proclaimed earlier, the statutory tort of serious invasion of privacy under the *Privacy Act 1988* (Cth) commences.
26 August 2025
Earliest date by which a casual employee of a small business can make an employee choice notification and the Right to Disconnect provisions commence

Return to the Executive Summary

Part 2 – FWC Major Cases

ANNUAL WAGE REVIEW 2024-25

The timetable for the Annual Wage Review 2024-25 is as follows:

Date	Event
4 April 2025	Closing date for lodging initial and/or post-Budget submissions
2 May 2025	Closing date for lodging reply submissions and any submissions relating to data or research published after 4 April 2025
9 May 2025	Closing date for expressions of interest in taking part in consultations
16 May 2025	Closing date for lodging supplementary submissions relating to data or research published after 2 May 2025
21 May 2025	Consultations – Sydney
Early June 2025	Decision expected
1 July 2025	Commencement of increased minimum and award wage rates

Ai Group is playing a leading role in the Annual Wage Review. Its submissions will identify a raft of significant moderating factors that will need to be taken into account by the Expert Panel this year.

These will include current adverse economic conditions (particularly in various sectors where there is significant award dependence, including retail and manufacturing) the shift to a lower inflationary environment and the associated reduction on cost of living pressures, persistently poor productivity outcomes, weakness in the private sector labour market, the cumulative burden of successive high annual wage review decisions and the implementation of a further increase in superannuation guarantee obligations from July this year,

Given the above considerations, Ai Group has proposed an increase of not more than 2.6% (see media release here). The ACTU is arguing for a 4.5% increase).

The Labor Party, through media statements, have indicated that they will call for economically sustainable real wage increases.

Return to the Executive Summary

APPLICATIONS FOR REGULATED LABOUR HIRE ARRANGEMENT ORDERS

Previously reports have advised of several applications for regulated labour hire arrangement orders, including Ai Group interventions.

On 10 December 2024, Ai Group filed submissions in relation to the union applications for regulated labour hire arrangement orders in respect of work performed by employees of WorkPac, Chandler MacLeod, OS ACPM an OS MCAP employer entities at three black coal mine sites in central Queensland – Peak Downs, Goonyella Riverside and Saraji, which are operated by BHP. Ai Group has been granted leave to intervene in the proceedings and make submissions that relate to matters of legal or general principle.

The applications were heard before a Full Bench of the FWC from 20 – 31 January, and 17 – 19 February 2025. The decision was reserved.

Any members who are subject to an application for regulated labour hire order are encouraged to contact Ai Group.

Return to the Executive Summary

MODEL DISPUTE, CONSULTATION AND FLEXIBILITY CLAUSES FOR ENTERPRISE AGREEMENTS

Previous Significant Issues reports have provided information about proceedings dealing with the development of new model dispute, consultation and flexibility clauses for enterprise agreements.

The model consultation and flexibility terms are taken to be terms of an enterprise agreement if a proposed agreement does not include an appropriate clause otherwise dealing with such matters. The model dispute clause provides a potential template for parties to adopt. The content of the provisions commonly influences the conduct of enterprise bargaining.

Ai Group played the leading role on behalf of employers throughout the consultation process, filing written submissions on 4 November 2024, 29 November 2024 and 5 February 2025.

Ai Group also appeared before the Full Bench and made detailed oral submissions. The essential position which Ai Group put to the FWC was that:

- The new model terms should not depart materially from the pre-existing model terms prescribed by the Regulations; and
- If there is any departure from the pre-existing terms, it should not result in an increase in the extent or nature of obligations upon employers.

In contrast to the moderate approach urged by Ai Group, the ACTU advanced a large number of proposals that departed significantly from the current model terms and would have imposed unreasonable and unjustifiable obligations on employers. Ai Group strongly opposed these aspects of the ACTU's submissions, as well as similar proposals advanced by unions.

On 20 February 2025, a Full Bench of the FWC determined the content of new model terms for enterprise agreements with respect to individual flexibility arrangements, consultation, and dealing with disputes.

Pleasingly, in its determination of the model terms, the FWC has rejected the problematic aspects of the ACTU and union proposals about which Ai Group had expressed concern and opposition. This includes the ACTU's proposition that the existing requirement to consult when a '*definite decision'* is made to introduce major change, should be changed to a requirement to consult whenever there is a '*proposal'* to introduce major change. The FWC will nonetheless conduct separate proceedings to further consider this issue later this year. Members should nonetheless be aware that there have been a number of substantive changes to the model terms.

Return to the Executive Summary

WORKING FROM HOME CASE

In August 2024, the FWC initiated proceedings, on its own motion, to develop a working from home term to be inserted into the *Clerks Private Sector Award 2020* (**Clerks Award**).

Ai Group intends to strongly argue that whilst awards should be varied to remove any barriers to the implementation of mutually agreeable working from home arrangements and that they should not afford employees a right to work from home. Any working from home arrangements should only be by agreement where it is suitable for the employer.

The FWC has engaged Swinburne University of Technology to undertake research to assist the FWC in considering the matter. The areas of research are:

- A data profile for the Clerks Award
- A survey of employers covered by the Clerks Award
- Quantitative research concerning employee preferences in relation to working from home.

Swinburne University will carry out two surveys as part of its research. One will be for employers and the other for employees. On 3 March 2025, the FWC published a statement containing draft questions for both surveys which had been developed by Swinburne University. On 11 March 2025, Ai Group provided feedback to the FWC regarding the draft surveys. Ai Group expressed concern that the survey was skewed to elicit information that would be relevant to a proposal to insert a right to request to work from home for employees covered by the instrument.

A conference was held on 21 March 2025 in relation to the draft survey questions during which Ai Group discussed concerns with the FWC and Swinburne University proposals.

With the support of all unions and other employer parties, Ai Group proposed that there should be a further conference to explore whether a consent position can be reached on a proposed working from home term. Justice Hatcher, President of the FWC, issued a statement on 26 March 2025 agreeing to conduct a further conference, which took place on 11 April 2025.

Ai Group participated in the conference to explore whether consensus could be reached with the union movement or otherwise whether some of the issues in dispute could be narrowed.

The timetable for filing proposed working from home clauses, submissions and evidence, and material in reply, will be revisited at a directions hearing before Justice Hatcher on 6 June 2025.

Return to the Executive Summary

TWU APPLICATIONS FOR MINIMUM STANDARDS ORDERS AND APPLICATIONS FOR ROAD TRANSPORT CONTRACTUAL CHAIN ORDERS

We discussed the TWU's applications in the Significant Workplace Relations Issues Report November 2024 and January 2025.

As the matters relate to the road transport industry, the FWC asked the Road Transport Advisory Group (**RTAG**) to provide advice on the following matters:

1. How the FWC should determine the priorities for the work of the FWC in relation to the TWU's applications.
2. A proposed process for RTAG to provide advice in relation to the matters it identifies as priorities.
3. How the RTAG proposes to conduct itself generally.

The RTAG is a body that has been recently established under the FW Act whose function is to advise the FWC in relation to matters that relate to the road transport industry.

On 11 December 2024, the RTAG responded to the FWC's request and expressed its provisional view on the prioritisation of the applications. The RTAG also outlined a process for it to consult with relevant parties with a view to confirming the RTAG's provisional advice on prioritisation once it had been carried out.

Interested parties were offered an opportunity to provide submissions on the RTAG's advice, which Ai Group did on 8 January 2025.

On 22 January 2025, Justice Hatcher issued a statement accepting and adopting the RTAG's advice as to its provisional view on priorities and directed it to carry out the proposed consultation process in relation to the applications with a view to providing the FWC its final advice once it had undertaken its consultation process.

Ai Group is participating in conferences which are convened by the RTAG and facilitated by FWC members as part of the RTAG's consultation process. Those meetings are occurring approximately every three weeks until August.

On 17 February 2025, the TWU filed an application seeking a road transport contractual chain order for the cash in transit industry. The application is currently being dealt with by Deputy President Slevin, who recently made confidentiality orders around the matter.

In the statement of 22 January 2025, Justice Hatcher also directed RTAG to advise on Mr Lawrence Hines' application to vary the *Road Transport (Long Distance Operations) Award 2020* and commence consultation in a similar manner to the other applications.

Return to the Executive Summary

ROAD TRANSPORT LONG DISTANCE DRIVERS CLAIM

On 22 January 2025, Justice Hatcher referred an application to make 22 variations to the Road Transport (Long Distance Operations) Award to the RTAG for advice and directed that RTAG should conduct a consultation process in respect of this application.

Return to the Executive Summary

Part 3 – Other major developments and cases

APPLICATION OF STATEMENT OF PRINCIPLES TO PRE-APPROVAL STEPS

In a decision of DP Wright, the FWC found that the employer failed to adequately explain its terms in circumstances where the terms of the new enterprise agreement would result in significant pay decreases for existing employees who had preserved conditions, such that it had not been genuinely agreed by employees. (Compass Group Remote Hospitality Services Pty Ltd t/as ESS Support Services [2025] FWC 609).

DP Wright found that the employer failed to comply with s.180(5)(a) of the FW Act as it had not taken 'all reasonable steps to explain the terms the 2024 Agreement, and the effect of those terms, to employees employed at the time who will be covered by the agreement'.

Paragraph 8 of the Statement of Principles required the employer 'at a minimum' to explain to employees how the new agreement will alter their existing minimum entitlements and other terms and conditions of employment. The employer did not do this. DP Wright noted it was particularly important for the employer to explain to existing employees how their conditions would change, given the employer's intention to reduce their pay. It was not sufficient for the employer to simply advise employees that the conditions for existing employees would be abolished without explaining how these conditions differed with respect to those applying to new employees.

The employer should have explained to the employees differences in entitlements and other terms and conditions between the new agreement and the following Award provisions that have been varied since the existing agreement was made:

- Requests for flexible working arrangements term, which was inserted into the Award on 10 July 2023.
- Right to Disconnect term, which was inserted into the Award on 23 August 2024
- Casual employment term, which was inserted into the Award on 26 August 2024.

This decision provides some guidance around pre-approval steps particularly in circumstances where there the new enterprise agreement would reduce terms and conditions for particular groups of employees.

Return to the Executive Summary

FAILURE TO GET UNION AGREEMENT ON BOOT MEANT AGREEMENT WAS NOT APPROVED

The FWC dismissed an application by an employer, Dome Developments Pty Ltd, for approval of a single enterprise agreement, after finding the agreement did not pass the better off overall test (**BOOT**). The UWU, which was the bargaining representative for the agreement did not support its approval and did not agree it passed the BOOT. Dome Developments Pty Ltd operates a chain of cafes in Western Australia.

This case considered the key amendments made to the BOOT by the SJBP Act, which require the FWC to (among other things):

Consider the views of employers, award-covered employees and bargaining representatives, including giving primary consideration to any common views of the bargaining representatives about whether the agreement passes the BOOT.

FWC view

In this case the fact that the UWU did not agree the agreement passed the BOOT meant there was no common view in respect of which he could give primary consideration.

Only have regard to the patterns or kinds of work, or type of employment, that are reasonably foreseeable at test time.

FWC view

While the employer argued the FWC must assess what would happen if the agreement was not approved, the FWC noted that:

- The FWC may receive a submission from an employer that a particular work pattern (such as work on a weekend) is not reasonably foreseeable, such that a failure to provide for that pattern in the agreement would not present a practical BOOT issue in respect of the agreement's approval. It is the usual practice for the FWC to note that the work pattern or type is not reasonably foreseeable in its decision.
- The clear intention of the "*reasonably foreseeable*" provisions was to confine the FWC to consideration of actual scenarios that were either in place or could emerge during the life of the agreement. Additionally, section 227A of the FW Act allows for a reconsideration of whether an agreement passes the BOOT if a new pattern or type of work emerges after its approval.
- The correct and permissible use of the "reasonably foreseeable" provisions means that employers only need to deal with actual working scenarios, not hypotheticals. The concept cannot, however, be stretched to making assumptions about what business decisions the employer might take in circumstances where the agreement was not approved.

Undertake a global assessment as to whether the terms of the agreement meet the BOOT.

FWC View

The FWC was guided by the FWC Full Bench decision in *Re Loaded Rates Agreements* [2018] FWCFB 3610, despite it being handed down before the SJBP Act amendments.

The FWC held it was clear the Full Bench had adopted a global rather than line-by-line approach in the decision, and had:

- considered the concept of non-monetary benefits, and not ruled out including them in an overall analysis, but warned that ascertaining their value can be difficult, particularly when such benefits cannot be assumed to have the same value for all employees; and
- sounded the warning that where there is a significant detriment in direct remuneration under a loaded rates agreement, it is unlikely that non-monetary benefits will adequately compensate the employee.

The FWC ultimately concluded the BOOT was not satisfied and that non-monetary benefits in the agreement could not bridge the gap. Undertakings could not remedy this.

See: *Re Dome Developments Pty Ltd* [2025] FWC 745.

Return to the Executive Summary

EMPLOYER ORDERED TO GRANT A FLEXIBLE WORK REQUEST

The FWC recently ordered an employer grant a flexible work request made under the National Employment Standards (**NES**), despite an employer's concerns that the arrangement would adversely impact the employee's ability to provide adequate customer service.

Requested flexible work arrangement

The employee, an account manager who already worked two days per week from home, requested the following arrangement:

- Mondays: alternating day in the office and work from home (**WFH**).
- Tuesdays and Thursdays: WFH (Bubbadesk) between 8.30 am and 4.30 pm.

Bubbadesk is a childcare alternative whereby a nanny looks after the child, but the parents are required to remain in the same building and are required to attend certain tasks, such as nappy changing. The times stipulated in the request relate to Bubbadesk's operating hours.

- Wednesdays: onsite for monthly catchups with customers.
- Fridays: day in the office.

This would enable the employee to work from home one additional day per fortnight.

Refusal of request by employer

The employer refused the request citing concerns relating to:

- customer responsiveness during business hours;
- customer perception - referring to comments from a customer and supplier about there being a young child and distraction; and
- Bubbadesk -stating if the employee had to leave for a customer, he would have to take his child with him.

FWC decides there were no reasonable business grounds for the refusal

Commissioner Sloan did not agree the employer had reasonable business grounds to refuse the applications request for the following reasons:

- The arrangements proposed were not inconsistent with the employment contract which stated that the office was the employee's "*usual*" place of work, noting the employer had raised no objection to the employee's existing work from home arrangement.
- He considered the employer's reliance on contractual terms ignored the purpose of flexible work arrangements which is to accommodate an employee's individual circumstances if the employee is able to do so. This might require a departure from the contract terms. Also, the employer's reliance on the applicant's contractual obligation to devote his whole time and attention to the employer was misguided, noting this clause was concerned with the applicant engaging in other business activities.
    - He criticised the employer's poor evidence of the impact that the arrangements proposed would have on its business. In particular:
        - the feedback attributed to the customer and supplier was "*extremely limited*". In essence the employer sought to have comments characterised as complaints without any basis for doing so and gave the comments more significance than was appropriate; and
        - he was unpersuaded an extra day working from home would have a material, if any bearing on the efficiency or productivity of the employer's enterprise or a significant, if any, negative impact on customer service.
    - He placed no weight on the employer's submission that the employee's case may set a precedent, noting each flexible work request would have to be dealt with by the employer on a case-by-case basis.

As there was no reasonable prospect of the dispute being resolved without an order, and also taking into account fairness between the parties, the employee's personal circumstances, and his assurance that he does not intend for the arrangements to be inflexible, the Commissioner ordered the proposed arrangements be put in place until 31 July 2025.

See: : *Aoyama v FLSA Holdings Pty Ltd* [2025] FWC 524.

Return to the Executive Summary

MULTI-EMPLOYER AGREEMENT – ROPING IN APPLICATIONS

In June 2023, supported bargaining changes introduced into the FW Act by the SJBP Act commenced operation. Broadly, these changes renamed and amended the pre-existing low-paid bargaining authorisation provisions of the FW Act and were intended to increase the use of multi-enterprise agreements for low-paid industries or sectors by removing barriers to accessing this stream.

On 10 December 2024 and following the making of a supported bargaining authorisation in September 2023, a Full Bench of the FWC approved the first supported bargaining agreement (which is a type of multi-enterprise agreement).

The agreement is to apply to 60 employers in the early childhood and care sector and their employees, as well as covering the United Workers' Union, Australian Education Union and Independent Education Union of Australia. The agreement has been in operation from 17 December 2024 and will nominally expire on 30 November 2026. On 17 December 2024 the Full Bench published its reasons for the approval decision.

Two variations have since been approved to together add 169 employers and their employees to this agreement: [2025] FWCA 523 and [2025] FWCA 282.

The UWU has already signalled its intention to make further applications to the FWC to 'rope in' other employers such that they become covered by the agreement.

Members can read more about the background to this matter in the Significant Workplace Relations Issues Report of November 2024.

Return to the Executive Summary

UPDATE ON OTHER KEY MATTERS

Matter	Status
Delegates' Rights Case – Judicial Review of variations to several modern awards	Ai Group was a respondent in applications for judicial review lodged by the Mining and Energy Union and the Construction, Forestry and Maritime Employees Union. The unions are seeking that the variations to a number of modern awards which inserted the model delegates' rights term be quashed, and that the FWC be required to re-exercise its powers to insert a delegates' rights term into those awards. Both applications were heard 17-18 March. The decision has been reserved. The matter has significant potential implications for the validity of the delegates' rights term inserted into awards last year.

Matter	Status
An application for judicial review of a single interest employer authorisation which was granted by the FWC in relation to three black coal mining employers in New South Wales	In the Federal Court of Australia – matter progressing

Return to the Executive Summary

Part 4 - Enterprise bargaining

TRENDS IN ENTERPRISE BARGAINING

Trends in Federal Enterprise Bargaining Report: December 2024 Quarter (as published on 27 March 2025 by the Department of Employment and Workplace Relations) (Report here)

The Average Annualised Wage Increase (**AAWI**) for federal agreements approved in the December quarter 2024 was **4.8%.**

This is an increase of 1.2% compared with 3.6% in the September quarter 2024. It can also be compared with 4.4% in the December quarter 2023 and the five-year average of 3.2% (December quarter 2019 to December quarter 2024).

Set out in the table below are the changes for various key sectors

Industry sector or type of agreement	AAWI % for agreements approved in the December 2024 quarter	Change from September 2024 Quarter
All sectors	4.8%	Up 1.2% (from 3.6%)
Private sector	4.0%	Up 0.1% (from 3.9%)
Transport, postal, warehousing	4.0%	Up 0.2% (from 3.8%)
Manufacturing	4.2%	Up 0.1% (from 4.1%)
Metals manufacturing	4.1%	Down 0.3% (from 4.4%)
Non-metals manufacturing	4.3%	Up 0.5% (from 3.8%)
Construction	5.8%	Up 0.9% (from 4.9%)
Clerical	6.4%	Up to 2.3% (from 4.1%)

Return to the Executive Summary

Part 5 – Government consultation and reports

PROPOSED CHANGES TO RESTRAINTS OF TRADE

On 23 August 2023, the Treasurer announced a Competition Taskforce to look at competition laws, policies and institutions. One issue it is reviewing is the use of restraint of trade clauses in employment, including non-compete and related clauses that are said to restrict workers from shifting to a better-paying job.

On 4 April 2024, the Competition Taskforce released an Issues Paper and fact sheet relating to non-competes, no-poach and wage-fixing agreements. Ai Group participated in this consultation and made a submission on 31 May 2024, emphasising that these types of clauses must be retained and are important for business. Ai Group shared members' experience whereby restraints of trade are generally used in an appropriate and reasonable manner to support productivity, innovation, investments in employees, business continuity and growth, as well as to protect legitimate commercial instruments.

On 25 March 2025, the Australian Government announced proposed changes to restraints of trade in the Budget 2025-26. It proposes banning non-compete clauses for workers earning less than the high-income threshold in the FW Act (currently $175,000). It would also make changes to competition laws to 'close loopholes' in respect of wage-fixing that caps workers' pay and conditions without their knowledge and agreement and to ban 'no-poach' agreements. The Government also indicated it will further consider and consult in respect of non-solicitation clauses, and in respect of non-compete clauses for high-income workers. The proposed reforms would take effect from 2027, operating prospectively.

Return to the Executive Summary

PAY DAY SUPERANNUATION - CONSULTATION

The Federal Government announced that it would require superannuation payments to be made on the same day salary/wages are paid instead of quarterly.

The Treasury has released an exposure draft bill and regulations for comment by 11 April 2025.

The amendments seek to:

- require employers to pay their employees' super at the same time as their salary and wages
- update penalties and charges for late or missed super payments.

The proposed start date for pay day super is 1 July 2026.

Ai Group will make a submission shortly, including seeking to ensure that any administrative burden on employers is minimised. Members wishing to discuss this issue should urgently contact scott.barklamb@aigroup.com.au.

Return to the Executive Summary

FAIR ENTITLEMENTS GUARANTEE CHANGES - CONSULTATION

On 17 February 2025, DEWR invited feedback on potential changes to the Fair Entitlements Guarantee (**FEG**).

The FEG is a legislative safety net scheme of last resort through which the Australian Government advances certain unpaid employee entitlements to eligible employees who have lost their jobs due to the insolvency of their employer and entitlements cannot be paid from another source.

The proposals are stated to address deliberate restructuring to access FEG and shift the cost of entitlements from business to the Government.

Return to the Executive Summary

REPORT ON SMALL CLAIMS PROCEDURE PROCESS FOR RECOVERING UNDERPAYMENTS

The Minister for Workplace Relations has released a departmental report reviewing the operation of the FW Act's small claims procedure for recovering underpayments.

This follows the significant changes that have already been made, including the increase of a claim value from $20,000 to $100,000

The most significant recommendation is that the FW Act should be amended to provide that:

- if a worker is successful in a small claims proceeding, the court may make an order that the employer pay the worker's legal costs, and
- if a worker is unsuccessful, both parties bear their own costs

The report recommends safeguards should be included, such as an exception where an applicant issues or conducts proceedings vexatiously or unreasonably.

Return to the Executive Summary

FUTURE OF WORK REPORT – DIGITAL TRANSFORMATION IN THE WORKPLACE

On 9 April 2024, the House Standing Committee on Employment, Education and Training adopted an inquiry into the digital transformation of workplaces following a referral from the Minister for Employment and Workplace Relations, the Hon Tony Burke MP. Ai Group's submission is here.

The inquiry tabled its report in Parliament in February 2025: The Future of Work.

The report states that digital transformation has exposed significant challenges, including gaps in Australia's regulatory frameworks and workplace protections, and a "*very concerning and excessive use of technology-enabled surveillance and data-collection by employers.*" It makes 21 recommendations, including the following which may be of most interest to members:

- Classifying AI systems used for employment related purposes as high-risk, including recruitment, referral, hiring, remuneration, promotion, training, apprenticeship, transfer/termination and adopting mandatory guardrails for AI.
- Changing the FW Act to impose liability for decision-making using AI/ADM – so that employers remain liable for these decisions.
- Reviewing the NES and modern awards to respond to the adverse effects of AI-linked job design.
- Reviewing related privacy and data issues, including banning high-risk use of data, requiring consultation on surveillance measures and jurisdiction for the FWC to manage disputes about workers' privacy obligations, improving transparency and procedural fairness – including right to explanation and requiring human oversight.
- Increasing obligations to consult about new technology.
- Requirement for employers to implement measures to prevent algorithmic bias.

The union movement is increasingly pushing for a regulatory response to the increased adoption of AI by employers.

Ai Group has been appointed to Artificial Intelligence and Workplace Relations Working Group convened by the Commonwealth Government.

Return to the Executive Summary

Part 6 – Equality, Sexual harassment and other Workplace Behaviours

POSITIVE DUTIES ACROSS SOME JURISDICTIONS BUT QUEENSLAND DELAYS INTRODUCTION

Queensland

Previous Significant Workplace Relations Issues Reports have discussed the introduction and passage of the *Respect at Work and Other Matters Amendment Act 2024* in Queensland.

Amongst other changes to the *Anti-Discrimination Act 1991* (Qld), the amendment legislation was to introduce a positive duty to take reasonable and proportionate measures to eliminate discrimination, harassment on the basis of sex and other objectionable conduct as far as possible. The changes were expected to commence on 1 July 2025.

On 14 March 2025, the Queensland Attorney General, Deb Frecklington, announced she would introduce legislation to delay implementation of the *Respect at Work and Other Matters Amendment Act 2024* **indefinitely**.

Australian Capital Territory

No such reticence has been demonstrated in the Australian Capital Territory, where a positive duty to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification commences in the ACT in April 2027 for private sector entities.

The positive duty applies to any ACT government administrative unit, territory authority and territory instrumentality and any individual with organisational management responsibility for any of these entities from April 2025.

New South Wales

In NSW, the Attorney requested the Law Reform Commission to commence a review of the *Anti-Discrimination Act 1977* (NSW) in 2023, including as to whether the Act should include positive obligations on employers to prevent harassment, discrimination and vilification, and to make reasonable adjustments to promote full and equal participation in public life.

Preliminary submissions were made in 2023. Ai Group's submission at that time pressed that a positive duty should not be created. It would create further complexity for PCBUs when similar duties already exist in work health and safety laws together with a positive duty under the *Sex Discrimination Act 1984* (Cth).

A further consultation paper is expected in the first half of 2025. Ai Group will continue to advocate on behalf of employers in this review.

Commonwealth

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) made 222 recommendations to the Federal Government in its final report. Some of these recommendations included changes to the *Disability Discrimination Act 1992*.

On 31 July 2024, the Australian Government published its response to these recommendations. This included accepting, in principle, the 15 recommendations related to the *Disability Discrimination Act 1992*.

As part of its response to the Disability Royal Commission, the Australian Government committed $6.9 million to the review and modernisation of the Disability Discrimination Act 1992 and the Attorney-General's Department has been asked to lead this review.

Key recommendations of most interest to members include the following:

- **Reversing the onus of proof** so it is the alleged discriminator who must prove the unfavourable treatment of a person with a disability was **not** because of that disability.
- Increasing the obligation to make '***adjustments'***, by removing references to 'reasonable' and introducing a standalone duty to make adjustments unless it would impose unjustifiable hardship on the person.
- Introducing a **positive duty** on all duty-holders to eliminate disability discrimination, harassment and victimisation based on that introduced under the *Sex Discrimination Act 1984 (Cth)* in respect of sexual and gender-based harassment.

Ai Group will engage in this process and members are encouraged to contact the Workplace Relations Team via email at wrconsultation@aigroup.com.au if they wish to share their experiences or discuss these proposals.

Return to the Executive Summary

NSW GOVERNMENT CONSULTS ON CHANGES TO ADDRESS PSYCHOLOGICAL SAFETY – WORKERS COMPENSATION

The NSW Treasurer has announced consultation on the use of WHS laws to prevent psychological injury.

The program of consultation will consider several issues, including the following:

- Give the NSW Industrial Relation Commission a bullying & harassment jurisdiction ahead of requiring those claims to be heard there first before a claim can be pursued for compensation. This will allow the Commission to address psychological hazards, fostering a culture of prevention.
- Define psychological injury, as well as 'reasonable management action', to provide workers and businesses with certainty – rather than let the definitions remain the subject of litigation.

- Align whole-person-impairment thresholds to standards established in South Australia and Queensland.
- Adopt some of the anti-fraud measures recently enacted by the Commonwealth to protect the National Disability Insurance Scheme.
- Respond further to the recommendations retired Supreme Court justice Robert McDougall made in his independent review of Safe Work NSW.

Ai Group will engage in this consultation when it commences.

Return to the Executive Summary

QLD WHS REQUIREMENT TO HAVE A SEXUAL AND GENDER-BASED HARASSMENT PREVENTION PLAN

The Work Health and Safety (Sexual Harassment) Amendment Regulation 2024 was made on 30 August 2024, with some provisions effective from 1 September 2024. Further provisions became effective on 1 March 2024.

This created new obligations for a PCBU when implementing control measures to manage a psychosocial risk that includes a risk of sexual harassment or sex or gender-based harassment. These commenced 1 September 2024.

It also introduced a new requirement for a PCBU to develop and implement a written prevention plan, in consultation with workers, that meets specific requirements, as summarised below and which commenced 1 March 2024:

- states each identified risk; and
- identifies the control measures; and
- identifies the matters considered in determining control measures; and
- describes the consultation undertaken; and
- sets out procedures for dealing with reports of sexual harassment or sex or gender-based
- harassment; and
- is set out and expressed in a way that is readily accessible and understandable to workers.

The PCBU must take reasonable steps to ensure workers are made aware of the prevention plan and know how to access it. The plan must be reviewed if there is a report of sexual harassment or sex or gender-based harassment, or if a health and safety committee or health and safety representative requests a review of the plan.

WorkSafe Queensland has published guidance, including a prevention plan template here.

Return to the Executive Summary

COMMONWEALTH WHS CODE OF PRACTICE – SEXUAL AND GENDER-BASED HARASSMENT

A new *Work Health and Safety (Sexual and Gender-based Harassment) Code of Practice 2025* is now in effect across the Comcare jurisdiction.

The new code of practice, approved by the Minister for Employment and Workplace Relations, Murray Watt, should be read and applied alongside the existing code of practice for Managing Psychosocial Hazards at Work. Sexual and gender-based harassment often occurs with other psychosocial hazards and PCBUs must consider the interaction between these hazards when managing risks to the health and safety of workers and others.

Approved Codes of Practice provide practical guidance for all duty holders on how to meet their obligations under work health and safety laws. They are admissible in court proceedings as evidence of what is known about a hazard, risk or control and may be used to determine what is reasonably practicable in the circumstances.

Return to the Executive Summary

THE WORKPLACE GENDER EQUALITY BILL PASSES, INTRODUCTING TARGETS FOR LARGE BUSINESS

The Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024 (Cth) passed both houses of Parliament on 26 March 2024 and awaits Royal Assent

The Bill's amendments to the *Workplace Gender Equality Act 2012* require organisations with 500 or more employees in Australia to commit to achieve, or at a minimum improve on, measurable targets to accelerate action on gender equality in their workplaces. These larger employers will be required to set at least three targets in every three-year cycle and then progress achievement of those targets. Results against the targets will be monitored through employers' annual reporting to WGEA and to their boards.

On 21 November 2024, the Bill was referred to the Senate Finance and Public Administration Legislation Committee. Ai Group's submission is here. Ai Group appeared before the Committee on 22 January and reiterated its position that the proposed linkage of these targets to government procurement eligibility presents significant challenges and potential unfairness. Ai Group urged the Committee to ensure a balanced and effective approach to promoting gender equality while maintaining fair and competitive procurement practices.

Return to the Executive Summary

FWO INVESTIGATION INTO SEXUAL HARASSMENT

The Fair Work Ombudsman (**FWO**) may investigate any action that may be contrary to the FW Act, including the prohibition of sexual harassment in connection to work.

On 20 March 2025, the FWO announced it commenced an investigation into allegations of sexual harassment in the building and construction sector in response to allegations reported in the media.

Once the FWO has completed its investigation, it may decide to take action. This may include a compliance notice, an infringement notice, an enforceable undertaking or litigation in respect of any alleged contravention of the prohibition of sexual harassment in connection with work.

It is important to remember that other regulators may also commence investigations into sexual harassment in the workplace.

AHRC can also investigate a workplace if it has 'reasonable suspicions'

Firstly, the Australian Human Rights Commission (**AHRC**) may proactively commence an inquiry or investigation when it '*reasonably suspects*' that an employer or person conducting a business or undertaking has not taken reasonable steps to eliminate sexual harassment.

During an investigation, the AHRC may compel the production of information and documents, can examine witnesses and is not bound by the rules of evidence. The AHRC may issue a compliance notice or agree an enforceable undertaking.

While the FWO will generally only investigate in response to allegations, the AHRC may also investigate where it has reasonable suspicions based on the following:

- Environmental scanning, research or academic literature.
- Information or advice provided by other government agencies or regulators (e.g., this would include the FWO, relevant State/Territory WHS regulators and other bodies with functions related to sexual harassment prohibitions under State/Territory anti-discrimination legislation) – see for example, the Victorian *Parallel Enforcement Strategy* which is published on both WorkSafe Victoria and the Victorian Equal Opportunity and Human Rights Commission websites.
- Information obtained in the course of performing the AHRC's other functions, including complaint-handling of individual grievances.
- Engagement with stakeholders.
- Information received from unions and worker representatives.
- Reports in the media and social media.

WHS regulators may also investigate workplaces for compliance

Secondly, work health and safety regulators may proactively commence investigations in relation to sexual harassment. These types of behaviours are psychosocial hazards which must be eliminated as far as is reasonably practicable under WHS legislation.

At a very high level, these types of investigations will generally seek to verify that organisations (and officers) are:

- Consulting with workers about work health and safety, including sexual harassment.
- Providing and maintaining a work environment that is without risks to health and safety, including as a consequence of sexual harassment in the workplace.

- Providing and maintaining safe systems of work.
- Monitoring the health and safety of workers and the conditions at the workplace to ensure that work-related illnesses and injuries are prevented.
- Providing appropriate information, instruction, training or supervision to workers and others at the workplace, to allow work to be carried out safely.
- Implementing control measures to eliminate or minimise the risks as far as is reasonably practicable.

For example, in NSW, Safe Work NSW's Psychological Health and Safety Strategy 2024 – 2026 confirms it is focusing on workplaces, industries and workers at greater risk of psychological harm, based on data and evidence. Safe Work NSW says that its targeting will initially rely on workers compensation data and workplaces named in the 2023 Law and Justice report. High-risk workplaces have been identified, including public administration and safety, education and training and healthcare and social assistance. At risk workers are young workers, culturally and linguistically diverse workers, Aboriginal and Torres Strait Islander peoples and workers with lived experiences of mental ill health.

Relevantly, Safe Work NSW has set targets to deliver by 2026, including:

- 80% of workplaces revisited after six months sustain their compliance improvements
- Increase planned inspector compliance visits by 25% per year between 2023 to 2026
- Complete a Psychosocial WHS Check for all inspector visits to organisations with 200 or more workers.

Return to the Executive Summary

OVERLAPPING OBLIGATIONS FOR SEXUAL HARASSMENT CREATE BUSINESS RISKS

The overlapping obligations relating to sexual harassment in the workplace are summarised in the table below to assist members in managing their risks in relation to sexual harassment.

Obligations	PCBU/Organisation
Sex Discrimination Act 1984 (Cth) and some other jurisdictions Positive duty for PCBUs to take all reasonable steps to eliminate sexual harassment at work.	AHRC - Pro-active investigations and enforcement AHRC may investigate if it has a "reasonable suspicion" the positive duty is not being met. May issue compliance notices and enforceable undertakings and enforce non-compliance.

Obligations	PCBU/Organisation
Sex Discrimination Act 1984 (Cth) and other State/Territory anti-discrimination legislation Sexual harassment is unlawful discrimination.	Application driven Liable for employee/agent action if fails to all reasonable steps to prevent sexual harassment. Orders, including compensation The applicant has limited cost exposure. Class actions are possible in some jurisdictions (for example, two class actions have been recently filed in the Federal Court of Australia alleging widespread and systemic sexual harassment and gender-based discrimination at Rio Tinto and BHP worksites since November 2023).
WHS legislation PCBUs must eliminate psychosocial hazards (e.g., sexual harassment) in the workplace as far as is reasonably practicable.	WHS regulators - Pro-active investigations and may prosecute Criminal liability – significant fines and, if an individual, imprisonment. (Leaders – due diligence requirements, with significant penalties; and workers may also have criminal offences made against them).
Fair Work Act Prohibition of sexual harassment in connection with work.	Applications driven - individuals (or unions, or FWO) PCBU liable for employee/agent action if fails to all reasonable steps to prevent sexual harassment. FWC dispute resolution. If not resolved, FWC consent arbitration or civil remedy application to Federal Court – including for penalties and compensation orders.
	FWO - proactive investigations and may seek civil remedies FWO can investigate and take action, including issuing compliance notice, agreeing enforceable undertaking and/or litigation.
Workplace Gender Equality Act Requirement to report information about prevention and response to sexual harassment.	Data collection - procurement Reporting entities need to provide data to get a certificate of compliance which may be relevant to an organisation's ability to tender for government procurement. The data may lead to proactive investigations by regulators, including of particular industries.
Workers Compensation Liability if sexual harassment at work results in a psychological injury	Workers' compensation premium Premium may increase; obligations to manage return to work and provide suitable duties. Creates some limitations on termination of employment.

Obligations	PCBU/Organisation
Enterprise agreements Enterprise agreements can, and often do, include terms for addressing sexual harassment complaint	FWO - pro-active investigations and may prosecute Contravention of FW Act and may seek civil remedies. Applicant driven (individuals or unions) – breach of enterprise agreement

Return to the Executive Summary

VICTORIAN PARALLEL ENFORCEMENT STRATEGY ON WORK-RELATED SEXUAL HARASSMENT

In 2022, the Victorian Government's 2021 Ministerial Taskforce on Workplace Sexual Harassment recommended that:

> *'WorkSafe lead the development and implementation of a joint enforcement strategy with VEOHRC specific to workplace sexual harassment incidents (and increasing WorkSafe's enforcement activity, including enforcing the existing prohibition on discrimination under s76 of the OHS Act relating to cases of workplace sexual harassment) to ensure a consistent and coordinated enforcement approach across the two regulators.'*

Subsequently, the Victorian Government accepted this recommendation and committed that:

> *'VEOHRC and WorkSafe will work together to develop a workplace sexual harassment enforcement strategy, that formally articulates the collaborative approach of jointly regulating workplace sexual harassment. This will be informed by the consultation and by outcomes of the prevention review (recommendation 7) and consider the differences in powers of right of entry and any limits on information sharing between WorkSafe and VEOHRC.'*

In accordance with this recommendation and the Victorian Government's acceptance of it, the **Parallel Enforcement Strategy** has been published on both the WorkSafe Victoria and the Victorian Equal Opportunity and Human Rights Commission websites.

The Strategy explains how WorkSafe Victoria and the Victorian Equal Opportunity and Human Rights Commission will work together to regulate work-related sexual harassment. The Strategy recognises comments made by the Australian Human Rights Commission's Respect@Work: Sexual Harassment National Inquiry Report (2020) which found that people were confused about the role of different regulators. It is underpinned by a Memorandum of Understanding between WorkSafe Victoria and the Victorian Equal Opportunity and Human Rights Commission.

This Strategy commits WorkSafe Victoria and the Victorian Equal Opportunity and Human Rights Commission to the following four actions:

- **Share information which increases our joint capability to regulate work-related sexual harassment.**

This gives each regulator a more complete picture of sexual harassment occurring in Victorian workplaces, and how the other regulator is responding and helps the targeting of prevention efforts.

- **Build our understanding of each other's jurisdictions and enforcement functions.**

  This helps each regulator to better understand how their powers complement each other, and how they can work together.

- **Design an improved process for referring people between WorkSafe and the Commission.**

  This ensures more people understand the options available to them, speak to the appropriate regulators for their situation and receive the help they need in a trauma-informed way.

- **Provide information to improve community understanding of what WorkSafe and the Commission can do in response to work-related sexual harassment.**

  This should increase understanding of the differing roles of the regulators in responding to sexual harassment, leading to reports being made to the appropriate regulator to better meet people's needs

The Regulators will continue to have discretion to exercise their compliance enforcement powers despite this Strategy. They will not jointly undertake investigations, inspections or prosecutions given differing legal powers, rights of entry and confidentiality provisions and how they relate to the investigations and prosecution of contraventions.

WorkSafe Victoria has published updated guidance on sexual harassment and gendered violence.

Return to the Executive Summary

Part 7 – Modern slavery

NSW GOVERNMENT RESPONSE TO THE MODERN SLAVERY COMMITTEE REPORT NO.3

On 20 December 2024, the NSW Legislative Council Modern Slavery Committee released its third report in relation to the statutory review of the *Modern Slavery Act 2018* (NSW).

It made several recommendations, including:

- Increasing the NSW Anti-slavery Commissioner's information gathering and sanctioning powers under the Act.
- That the NSW Government explore the use, scope and efficacy of penalties to reduce the prevalence of modern slavery in New South Wales

The NSW Government tabled its response on 20 March 2025 and did not support any of the recommendations made by the Committee, including those noted above.

Return to the Executive Summary

Part 8 – Fair Work Commission and regulator activities of note

FWC GENERAL MANAGER 2024 REPORTS

Reporting by General Manager

Under section 653 of the FW Act, every 3 years the General Manager of the FWC is required to review the developments, in Australia, into:

- making enterprise agreements;
- individual flexibility arrangements;
- requests for flexible working arrangements and extensions of unpaid parental leave.

On 26 March 2025, the following FWC General Manager reports were tabled in the Senate:

- General Manager's report into developments in making enterprise agreements under the Fair Work Act 2009 (Cth): 2021–24
- General Manager's report into the operation of the provisions of the National Employment Standards relating to requests for flexible working arrangements and extensions of unpaid parental leave under s.653 of the Fair Work Act 2009 (Cth): 2021–24
- General Manager's report into individual flexibility arrangements under s.653 of the Fair Work Act 2009 (Cth): 2021–24

The reports present findings for the reporting period 26 May 2021 to 25 May 2024.

Members should note that significant legislative change took place during this reporting period, some of which may not be wholly reflected in the reported data.

Report – developments in making enterprise agreements

The General Manager's report into developments in making enterprise agreements under the FW Act made the following key observations:

- The number of workers covered by agreements increased by 36.5% and applications to deal with bargaining disputes increased 73.5% over the past three years.
- The number of employees covered by deals approved in the latest reporting period rose to 2.65 million from 1.94 million in the previous period.
- Industries with the highest number of employees covered included health care and social assistance, education and training, and public administration and safety.
- The number of agreements approved themselves increased only marginally, from 12,305 (revised) in the 2018-2021 period to 12,920. Of those, 5019 were in the construction industry, 2207 in manufacturing and 1404 in transport, postal and warehousing.

By contrast, the 2021 report showed that agreement approvals had decreased by approximately 50% over the preceding 10 years. For example, in the 2012 report reported that 21,988 agreements had been approved during the 2009-2012 reporting period.

Report – flexible working arrangements and extensions of unpaid parental leave

Key findings in the General Manager's report into flexible working arrangements include:

- Parents caring for a child of school age or younger were the most common category of employees making requests for flexible working arrangements.
- The most common requests were for changes to when work is performed and changing the location to a work from home/hybrid arrangement and there was an increase in requests to work from home after employers encouraged workers to return to the office following the COVID-19 pandemic.
- Generally, requests were granted and often were granted in full. Some interviewees reported that the legislative changes requiring an employer to explain why a request was refused had led to further discussions and at times to an alternative 'compromise' request being granted.
- There were some observations that the number of requests had increased during the reporting period, although it was uncertain whether this was due to the legislative changes or in response to directions from employers to return to the office.

In relation to requests for extensions of unpaid parental leave, requests were rare and were usually granted. It was however observed by some interviewees that the recent legislative changes could have an impact in the future.

Report – individual flexibility arrangements

The General Manager reported that individual flexibility arrangements were not commonly used. This was likely due to a lack of understanding and awareness, as well as the uncertainty created by the employee's ability to unilaterally terminate the arrangement.

Among employers and employees, the most common types of flexibilities requested were:

- **employers**: changes to start and/or finish times to facilitate shifting the spread of ordinary hours by agreement, thereby addressing issues with overtime and penalties that arise from that change
- **employees**: changes to start and/or finish times, most likely to accommodate caring responsibilities.

Over the reporting period there had been only one decision in relation to individual flexibility.

Return to the Executive Summary

CONTACTS

This report has been prepared by Ai Group's National Workplace Relations Policy and Advocacy Team. The Team represents the interests of Ai Group and AFRA Members through:

- Protecting and representing the interests of Members in relation to workplace relations matters.
- Leading and influencing the workplace relations policy agenda.
- In collaboration with Members, developing policy proposals for worthwhile reforms to workplace relations laws.
- Making representations to Government and Opposition parties in support of a more productive and flexible workplace relations system.
- Writing submissions, preparing evidence, and appearing in major cases in the Fair Work Commission (FWC).
- Representing Members' interests in modern award cases and reviews.
- Representing Members collective interests in significant cases in Courts.
- Representing individual Ai Group Members in significant cases in the FWC and Courts.
- Keeping Ai Group Members informed and involved in workplace relations developments.
- Providing forums for Ai Group Members to share information on best practice workplace relations approaches, and to influence policy developments, e.g., through Ai Group's PIR (Policy-Influence-Reform) Forum and PIR Diversity and Inclusion Forum.
- Liaising with regulators including the Fair Work Ombudsman, as well as Departmental officials.
- Writing submissions and appearing in numerous inquiries and reviews carried out by a wide range of bodies including Parliamentary Committees, Inquiries, Royal Commissions, the Productivity Commission, the Australian Human Rights Commission, the Australian Law Reform Commission, and others.
- Opposing union campaigns on issues which would be damaging to competitiveness and productivity.

Ai Group welcomes and values your input and support.

AFRA members wanting to discuss any of the issues in this report can contact Brent Ferguson Head of National Workplace Relations Policy, at Ai Group via email:

brent.ferguson@aigroup.com.au.